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A FOCUS ON MINIMIZING POTENTIAL RISKS BY PROCEEDING UNDER A BILATERAL OR MULTILATERAL TREATY INSTEAD OF A CONTRACT

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I. ABSTRACT

The paper discusses the advantages of utilizing bilateral or multilateral treaties instead of contracts in international business. It specifically focuses on the various international agreements as an example of a treaty that establishes clear legal obligations and reduces potential conflicts between parties. The document argues that treaties provide greater legal certainty and stability for organizations, particularly in complex legal situations involving different parties. It highlights the disadvantages of depending solely on contracts, such as ambiguous terms and inadequate dispute resolution mechanisms. The document mentions that bilateral investment treaties have been controversial and calls for a review of the traditional model. It emphasizes the benefits of treaties, including the ability to regulate foreign direct investment and minimize risks. The paper concludes that negotiating treaties may require more effort, but they ultimately offer greater stability and minimize potential risks compared to contracts.

II. KEYWORDS:

Bilateral treaties, Multilateral treaties, International business, Dispute resolution mechanisms.

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III. INTRODUCTION

Rather than depending on individual contracts between each country the United States, Mexico, and Canada Agreement (USMCA) establishes a bunch of agreed-upon decisions and regulations that oversee trade between the three nations. This treaty gives greater legal certainty and stability for organizations by establishing clear legal obligations and debate resolution mechanisms, lessening the gamble of potential conflicts between parties. It also allows for greater collaboration and coordination between the three nations, advancing economic development and diminishing potential risks associated with trade debates or changes in regulations. The paper argues that while contracts are valuable as a rule, they may not be the most ideal option for managing risks at times, particularly those that include different parties and complex legal issues. Instead, bilateral or multilateral treaties can give a more vigorous and stable legal framework that is more qualified to manage these sorts of risks. The paper examines the advantages of utilizing treaties over contracts, including the ability to establish clear legal obligations, give question resolution mechanisms, and diminish uncertainty and potential conflicts between parties. It also takes a gander at the potential disadvantages of depending on contracts in complex legal situations, including the gamble of ambiguous terms, inadequate question resolution mechanisms, and the potential for one party to take advantage of its bargaining power.[2] Ultimately, the paper argues that while treaties may call for more investment and effort to negotiate, they can ultimately give greater legal certainty and stability than contracts, particularly in situations where there are different parties and complex legal issues at stake.

Bilateral investment treaties have been a wellspring of political controversy as of late. This is clear from the alarming increase in the number of debates among investors and legislatures. The treaties create an unequal distribution of privileges and obligations between created nations, which are the wellspring of most foreign direct investment, and non-industrial nations, which are the main beneficiaries. They lead to the

[2] Kartseva, V,Y-H. Tan, and J. Gordijn, *Developing a Modelling Tool for Designing Control Mechanisms in Network Organisation*s, Proceedings of the 17th Bled International eCommerce Conference, 2004

increased gamble of litigation and have a negative impact on the net advantage of investment to beneficiary nations. Investors have initiated countless cases against nations that have bilateral investment treaties.[3] Moreover, the advantage of these treaties in attracting foreign direct investments isn't believed to compensate for the litigation initiated against these nations. For this reason, there is a developing perspective that the traditional model for bilateral investment treaties needs a survey. This should focus on fostering another generation of foreign investment strategy framework. This ought to, along with advancing foreign investment, also enable beneficiary nations to regulate foreign direct investment in accordance with their public approaches.

The rationale of this paper is to evaluate the benefits of using international treaties as opposed to contracts when conducting business across international borders. Contracts are generally used to establish business relationships between two parties and to define the terms and conditions of the agreement. However, when conducting business across borders, there are additional risks and uncertainties that may arise, such as differences in legal systems, language barriers, cultural differences, and political instability. Bilateral and multilateral treaties are agreements between two or more countries that establish rules and regulations for international trade, investment, and other economic activities. These treaties offer several advantages over traditional contracts. First, they provide a framework for the resolution of disputes that may arise between the parties. Second, they establish clear rules and regulations for the conduct of business, which can reduce uncertainty and minimize risk. Third, they can provide a level of political and economic stability that may not be available through traditional contracts.

The significance of this study lies in the potential benefits that can be gained from using bilateral and multilateral treaties in international business transactions. By focusing on minimizing potential risks, businesses can operate more efficiently and effectively in the global marketplace. This can lead to increased trade, investment, and

[3] S. Ostry, *Governments and Corporations in a Shrinking World, Council of Foreign Relation*s, 1990 ; E. M. Graham and P. R. Drugman, *"The Surge of Foreign Direct Investment in the 1980s"*, Froot (ed.), Foreign Direct Investment, 1993.

economic growth, as well as greater political and social stability. Furthermore, this study can provide valuable insights into the benefits and drawbacks of using international treaties versus contracts for businesses and policymakers. It can inform the development of policies and regulations that promote international trade and investment while minimizing risks for all parties involved. Ultimately, the findings of this study can help businesses and policymakers make more informed decisions when conducting business across borders, leading to greater economic prosperity and stability in the global marketplace.

IV. STATEMENT OF PROBLEM AND CURRENT SCENARIO

In international business, companies often enter into agreements with foreign entities to conduct business operations. However, there are potential risks involved, such as legal disputes, breaches of contract, and unexpected changes in laws and regulations. These risks can be mitigated by opting for a bilateral or multilateral treaty instead of a contract. The problem is that some companies may not be aware of the benefits of a treaty or may not be familiar with the process of negotiating one. As a result, they may continue to rely solely on contracts, which may not offer sufficient protection against potential risks.

Currently, many companies still rely on contracts when conducting business with foreign entities. While contracts can be useful in outlining the terms and conditions of a business agreement, they may not provide adequate protection against potential risks. This is because contracts are binding only between the two parties involved and do not have the force of law behind them. In contrast, a bilateral or multilateral treaty is an agreement between countries that is legally binding and provides a framework for conducting business. There are many benefits to using a treaty instead of a contract. For example, a treaty can provide protection against unexpected changes in laws and regulations that may affect business operations.[4] It can also provide a dispute resolution mechanism that is more effective than the legal systems of individual countries. Additionally, a treaty can promote stability and predictability in

[4] S. Gootpu, "*Portfolio Investment Flows to Emerging Markets", Port- folio Investment in Developing Countries,* op. cit., 45 et seq.

international business by establishing clear rules and standards. However, negotiating a treaty can be a complex and time-consuming process. It requires the involvement of multiple parties and may involve sensitive political issues. As a result, some companies may be hesitant to pursue this option. Overall, while contracts are still widely used in international business, there is a growing recognition of the benefits of using bilateral or multilateral treaties to minimize potential risks. Companies should consider the advantages of a treaty and work with legal experts to navigate the negotiation process.

V. BILATERAL, MULTILATERAL AND CONTRACT TRADES

A. Multilateralism and the WTO

By and large, multilateralism has been the prevailing methodology, typified On the planet Trade Association. The WTO as of now has 159 individuals, who trade tax inclinations in accordance with the non-prejudicial "most-favored-nation" guideline. The item extent of the WTO has continuously extended beginning around 1948 through a progression of arranging rounds; the ongoing one is known as the Doha "improvement round", which started in 2001. Multilateralism is the "strategy idealist" way to deal with trade progression.[5] Since Russia's promotion to the WTO in 2012, basically generally critical economies have become individuals, making a solitary coordinated arrangement of worldwide trade rules. Yet, size has additionally demonstrated to be one of the WTO's significant shortcomings.[6] Having numerous individuals makes agreement hard to produce, and ongoing years have seen the development of a complicated cluster of "alliances" with contending, and frequently inconsistent, plans. Disagreement among these alliances - especially over the delicate issue of agribusiness is one of the fundamental reasons the Doha round is right now gridlocked following 12 years of discussion.

B. Respective free trade agreements

[5] David J. Bederman, *Revivalist Canons and Treaty Interpretation*, 41 UCLA L. REV. 953' 979 (1994).
[6] A. A. Fatouros, Government Guarantees to Foreign Investors, 1962 ;
P. Weil, "Problèmes relatifs aux contrats passés entre un Etat et un particulier", Recueil des cours, Vol. 128 (1969), 181

With the WTO in gridlock, consideration has gone to respective free trade agreements (FTAs). Basically unbelievable before the mid-1990s, these agreements have extended dramatically during the last ten years as states tried to develop trade attaches with key financial accomplices. Reciprocal FTAs normally include states trading trade concessions with one another, yet some additionally address supposed trade-related measures like venture, licensed innovation, and biosecurity. The essential allure of respective FTAs is their simplicity; with just two gatherings, arrangements can be haggled proficiently. Yet, as the fast and-simple choice, they frequently miss the mark regarding advancing veritable free trade. Significant however delicate trade issues (farming, for example, and administrations) are frequently prohibited from respective FTAs, and not many arrangements with trade-related gauges considerably.

They likewise represent the vexing "spaghetti bowl issue" of making a complicated arrangement of covering and conflicting standards that disintegrate the respectability of the worldwide trade framework. Provincial free trade agreements are the third choice. Halfway among multilateralism and bilateralism, they include a gathering of nations inside a geographic district arranging a free trade region. Trade regionalism got during the 1990s, through the development of the Mercosur bloc (1991), the ASEAN free trade region (1992) and the NAFTA agreement (1994).[7] Australia is party in two provincial trade agreements as of now under discussion in Asia: the US-drove TPP and the ASEAN-focused RCEP.

Territorial free trade agreements are some of the time considered a trade perfect balance - simpler than multilateralism, yet more significant than respective arrangements. To be sure, regionalism advocates have likewise portrayed them as a structure block where multilateral arrangements can later be fabricated. In any case, they face their own difficulties. Power deviations inside locales are much of the time profoundly articulated, prompting bargains that favor the biggest part to the detriment of more modest accomplices. They likewise represent the gamble of "balkanising" the worldwide exchanging framework by partitioning the world

[7] Cordenillo RL. T*he economic benefits to ASEAN of the ASEAN China free trade area. Jakarta:* The ASEAN Secretariat Publication; 2005.

economy into contending trade blocs. Preferably, multilateralism is the best technique to change trade really. Yet, the Doha round of the WTO has slowed down, and a little economy, for example, Australia free arguably comes up short on heave to genuinely propel chats on its own. In this unique circumstance, policymakers have progressively shifted focus over to different roads to advance the national trade plan.

C. Bilateral Investment Treaty Arbitration

Unavoidably, because of significant political change, there have been setbacks en route, most quiet the breakdown of the arrangement of discretion under the Moscow Convention which controlled business question goal inside the order economies of COMECON. Nonetheless, let it be recognized that that framework had a lot to praise regarding straightforwardness, unequivocal quality, and cost. Jurisdictional questions were for all intents and purposes obscure and costs were kept inside reasonable and adequate limits. One of the striking improvements has been the impact of the entryway strategy of China toward the finish of the 1970s.[8] Through this entryway has poured a surge of abroad financial backers. The impact, some could say poisonous, of the new old style monetary hypothesis in the Western world on the particular jobs of State-run administrations and markets has prompted discount privatization in created and non-industrial nations of crucial national interests, for example, media communications, power supply and framework. Accordingly, not just have new areas of financial movement opened up, yet additionally new nations and locales of the world have been presented to the effect of worldwide trade and privatization.

The development in international discretion has caused various issues. There have been, for instance, huge strains among private and public interests such as, be set the power supply industry in India driving not exclusively to the breakdown of Dabhol. however other power projects too. The progressive monetary emergencies which have burdened Argentina have been maybe the most hitting illustration of issues with a significant host state in Latin America. Challenges with the acknowledgment and requirement of awards in the previous Soviet Association have been a difficult issue

[8] Fleming JM. *On exchange rate unification.* The Economic Journal. 1971.

notwithstanding adherence to the New York Convention.[9] The effect of debasement in international business stays broad and serious. International referees are turning out to be progressively mindful of the maltreatment of cycles by degenerate gatherings and the need to help international endeavors go against defilement.

Researcher's second wide perception goes to the international structure inside which quite a bit of current mediation has created. At the point when vocations, strategy and support in international mediation rested generally with the ICC, The International Court of Justice was laid out in 1923 in the result of WWI. The ICC was (and stays) the main arbitral establishment that can profess to be worldwide. The scientist put aside for this reason the expert oceanic and item trades and arbitral frameworks essentially situated in London, however this isn't to be little their commitment to the improvement of sea and product exchanging. While the ICC was the main international organization, it was at that point clear by the mid-1960s that the job of UNCITRAL was vital in blending and normalizing international techniques. In 1958, the New York Convention gave the significant system to international discretion followed a couple of years after the fact by the Model Law and Model Principles. By the late 1950sinternational collaboration was well in progress, especially in Europe where the exchange among East and West in fora, for example, UNCITRAL and ICCA drove, for instance, to the Geneva Convention of 1961 and to participation that crossed major political and financial limits.[10] Because of the sensational ascent in BIT cases, commercial arbitrators presently routinely choose matters of public international law. Arbitrators, whose experience was established in confidential international law, presently look at such public international issues as crawling and administrative confiscation; the translation of norms of fair and evenhanded treatment; and full security and security. Arbitrators likewise consider the law of deals, what they are intended to do and not to do, resolving issues as whether BITs stretch out security to simply legally binding debates through an umbrella provision, or whether an

[9] Hejazi W, Pauly P. *Motivations for FDI and domestic capital formation.* Journal of International Business Studies. 2003;34(3):282–289.
[10] Bhagwati, J., & Tironi, E.,. *Tariff Change, Foreign Capital and Immiserization*, Journal of Development Economics, 7(1), 71–85 (1980)

arbitration proviso inside a BIT is fit for development through a most-favored-nation statement.

VI. EFFECTIVE IN MINIMIZING POTENTIAL RISK

A. BIT's and Risk Management

The ICSID database of Bilateral Investment Treaties (BITs) is a comprehensive resource for anyone interested in international investment law and the resolution of investment disputes between states and foreign investors.[11] The database includes information on the BITs signed by countries, their entry into force dates, and their termination dates, which is useful for understanding the legal framework for international investment.

In addition, the database provides information on any disputes that have been submitted to the center for arbitration or conciliation under the BITs. This information can help identify trends in investment disputes, the types of issues that arise, and the outcomes of these disputes. Furthermore, the ICSID database of BITs can be used by investors and governments to identify the countries that have entered into BITs and the protections that are available to foreign investors in those countries. It can also be used by scholars and policymakers to analyze the effectiveness of BITs in promoting foreign investment and resolving disputes. Overall, the ICSID database of BITs is an important resource for anyone interested in international investment law and the resolution of investment disputes, and it provides valuable insights into the legal framework for international investment and the effectiveness of BITs in promoting foreign investment and resolving disputes.

The effect of worldwide firms on emerging nations is quite possibly of the most controversial issue in the ongoing discussion over globalization. Much has been expounded on the large scale monetary effect of unfamiliar investment. One's revenue

[11] *Database of Bilateral Investment Treaties*, Resources, World Bank, Accessed at : https://www.icsid.worldbank.org/ . Accessed on 03rd April 2023. *The International Centre for Settlement of Investment Disputes (ICSID) maintains a database of Bilateral Investment Treaties (BITs) that are available for public access. The database includes information on the BITs signed between countries, their entry into force dates, and their termination dates. Additionally, the ICSID database includes information on any disputes that have been submitted to the center for arbitration or conciliation under the BITs. This information includes the names of the parties involved, the dates of registration, and the status of the cases. Overall, the ICSID database of BITs provides valuable information on the legal framework for international investment and the resolution of investment disputes between states and foreign investors.*

goes past these macroeconomic ramifications to zero in on the political and social impacts of Foreign direct investment (FDI). One's general revenue is in the dynamic cycles of both unfamiliar investors and host legislatures. Albeit these cycles are perplexing and diverse, our spotlight in this paper is on the job of Bilateral Investment Treaties (BIT), an instrument of developing significance as arising economies try to draw in unfamiliar investment. This investigation of BIT is important for our continuous endeavor to comprehend how unfamiliar investors' and host nations' endeavors to restrict risk influence the homegrown business climate.

Investors generally face risks since changes in market costs and open doors can't be impeccably anticipated ex-parte. Be that as it may, in many emerging nations the risk goes past normal market risk. Investors might have little confidence in the dependability and decency of property freedoms and government implementation, and alternately, nearby organizations, residents, and lawmakers might lack an abundance of trust in the thought processes and resilience of international business. Investors whine that the guidelines are indistinct and variable over the long run. Pundits in the host country stress that international investors will procure a large portion of the additions and will escape at the earliest difficult situation. In the limit, the doubt on the two sides can be enormous to such an extent that almost no investment happens, even at the point when this investment would be helpful to the two players. As of late international investors in low-and center pay nations have been supported by the development of bilateral investment treaties (BIT). These are treaties endorsed between the nations of origin of investors and potential host nations that set an overall structure for the exchange of FDI bargains. They tie the host country to treat all unfamiliar investors from the nation of origin in manners that will safeguard their investments and that give them either equality with or benefits over homegrown investors.[12]

[12] Curtis A. Bradley, The Treaty Power and American Federalism, 97 MICH. L. REv. 390, 396 (1998) *("[T]here has been a proliferation of treaties [in the latter half of the twentieth century], such that treaty-making has now eclipsed custom as the primary mode of international lawmaking*."); Daniel W. Drezner, *On the Balance Between International Law and Democratic Sovereignty*, CHI. J. INT'L L. 321, 322 (2001) (*stating that "the number of treaties deposited in the United Nations" has "more than doubled" during the past twenty years*); David M. Golove, *Treaty-Making and the Nation: The Historical Foundations of the Nationalist Conception of the Treaty Power*, 98

The creating scene has been overwhelmed by a kind of investment treaty lunacy. Similar as tulip fans in bygone eras, nowadays virtually every agricultural nation generally likes to assume that it needs an investment treaty. Created nations are very much glad to give the requested ware. The treaties have numerous allies; they additionally have a rising number of pundits. Allies view the treaties as a significant, for sure fundamental, strategy device to work on an emerging nation's "investment environment." Frequently zeroing in specifically on the treaties' investor-state debate settlement arrangements and the new blast of treaty-based suit, assault the treaties, which Researcher allude to conventionally here as bilateral investment treaties, or BIT, as impinging after non-industrial nation sway such that honors the interests of international business to the detriment of more extensive advancement objectives.

In researcher's view the discussion over BIT has invested a lot of energy both discussing the better doctrinal places of BIT and Spot based law, and making free observational cases, frequently based on next to zero logical information, with regards to the alleged advantages or damages of the treaties, while giving extremely little consideration to whether or not BIT are hypothetically important to determine the fundamental issues that they are apparently intended to address.[13] In the first place, Spot allies ordinarily misquote and overstate the issue that BIT are mostly expected to address (purportedly extreme issues of dependable responsibility and obsolescing deal). Second, Piece allies misquote and overstate the degree to what BIT are extraordinarily viable at settling, or important to determine, any such issues. Researcher's most fundamental point here is that unfamiliar investors participated in the riskiest investment projects have long could bridle the abilities of international regulation and international settlement to legitimately protect their monetary associations with agricultural nation have states. They have done as such, and keep on doing as such, through the organization of contract. BIT allies have done an

MICH. L. REv. 1075, 1304 (2000) ("[I]nternational treaty practice has greatly expanded in the past half century and promises to expand further in the decades ahead as globalization proceeds.").

[13] Joanna Lewis, *A Review of the Potential International Trade Implications of Key Wind Power Industry Policies in China* (prepared for the Energy Foundation China Sustainable Energy Program (Oct. 7, 2006)), available at *http://www.resource-solutions.org/lib/librarypdfs/ China.wind.policy.and.intl.trade.law.Oct.07.pdf* (last visited 03 April, 2023).

exceptionally unfortunate occupation of addressing why contractual answers for issues of tenable responsibility or obsolescing deal are innately lacking for the main job.

VII. IS THERE NEED TO SHIFT FROM BILATERAL/ MULTILATERAL TREATIES TO CONTRACTUAL TREATIES?

To start with, the standard risks that BITs are as far as anyone knows implied and possibly ready to lessen risks getting from obsolescing deal elements are generally slight. Second, these risks are somewhat effortlessly limited, to the degree to which they can be limited, by imaginative investment organizing (also the acquisition of investment insurance) or, in particular, by investment policies. Numerous investors, and presumably by far most of all huge investors in high-risk areas, depend fundamentally on investment contracts to legitimately get their investments, in spite of the appearance of BITs. BITs are not really important to support investment, there is no proof that investors request the treaties as a condition to effective money management, and it is worth truly taking into account whether host states may be ideally serviced by doing without the treaties for a system where the default terms of deal gave to investors are moderately gentle by the present norms. For instance, and contingent upon the area, investors could sensibly hope to be dealt with much the same way to homegrown investors under the host state's civil law, with the comparing assumption that questions with the host state will be settled by homegrown courts - a return, one might say.

Standards of correspondence among homegrown and unfamiliar investors that would assist with alleviating worries that unfamiliar investors are aimlessly being conceded uncalled for legitimate benefits over homegrown contenders. In any case, unfamiliar investors would likewise be permitted as they are as of now permitted - to deal on a singular reason for more grounded or better securities and favors to be implanted in investment contracts.

A. Advantages of such a methodology

To begin with, expecting investors to can hope for the ideal substance and level of legitimate insurance might assist with expanding the authenticity of the international investment law framework. BITs are treaties between states that give important freedoms to private entertainers. These awards of privileges are entirely hilter kilter: investors are not involved with the first understanding (nor, as confidential entertainers, might they at any point be), and they are expected to don't offer up anything as a trade off for the treaty's advantages. This unevenness assists with taking care of discernments that BITs address an unfair arrangement for have states - something given for no good reason. An accentuation on contract offers have states the fair chance to acquire something for something and assists with relieving the insight that uncalled for terms of deal have, through treaty, been forced on the host state by strong home-state legislatures. There is in any event some proof that host states can be entirely adequate at drawing in investments based on conditions less positive for unfamiliar investors than those commanded by treaty or purportedly expected by standard international law.

VIII. CONCLUSION

The investors may be in an ideal situation under a BIT system than under one in light of contract, as they get significant advantages from the treaties, for example, reliable admittance to arbitration, that they couldn't haggle all alone. Yet, this isn't, by itself, motivation to try not to move from treaty to contract to manage have state-unfamiliar investor relations. Researcher’s fundamental point is that BITs give all investors an entirely positive one-size-fits-all deal that a significant number of them don't require or expect as a condition to contribute. A contract-based system permits have states to offer BIT-like certifications just to those investors that require them as a condition to contribute. Seeing BITs with regards to existing other option (and frequently covering) foundations, especially the establishment of contract as upheld by the New York and ICSID Shows, we can productively and all the more genuinely view the treaties as gadgets planned basically to require have states to furnish investors with ideal ensures that investors might not have had the option to acquire all alone. In such manner, BITs

capability considerably more like a home government endowment to investors than is usually perceived. The time has come to genuinely reexamine whether such an endowment is either meriting or attractive. There is a lot to be said for letting unfamiliar investors potentially run wild. On the off chance that a specific investor really thinks often about ensured admittance to international arbitration, or lawful adjustment, or liberal privileges to move cash abroad, and such, then, at that point, the investor can request it.